

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Richard Muñoz)	File No. EB-02-TP-114
2132 Shadowlawn Drive)	NAL/Acct. No. 200232700011
Naples, Florida 34112)	FRN 0007-0496-61
)	

FORFEITURE ORDER

Adopted: October 22, 2002**Released: October 24, 2002**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to Richard Muñoz for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“*Act*”).¹ The noted violation involves Mr. Muñoz’s operation of a radio station on 105.1 MHz without Commission authorization.

2. On June 5, 2002, the Commission’s Tampa, Florida Field Office (“*Tampa Office*”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Mr. Muñoz for a forfeiture in the amount of ten thousand dollars (\$10,000).² Mr. Muñoz filed a response to the *NAL* on July 8, 2002.

II. BACKGROUND

3. On April 20, 2002, agents from the Tampa Office investigated a complaint alleging that an unlicensed radio station was transmitting on frequency 105.1 MHz in the Naples, Florida area. A search of Commission records showed that there was no FM radio station licensed on 105.1 MHz in Naples, Florida. Using a mobile direction finding vehicle, the agents detected an FM radio station operating on 105.1 MHz and traced the station to the Tree of Life Church located at 2132 Shadowlawn Drive, Naples, Florida. The agents took field strength measurements of the station’s signal and determined that the station required a license to operate.³ The agents interviewed several witnesses at the

¹ 47 U.S.C. § 301.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232700011 (Enf. Bur., Tampa Office, released June 5, 2002).

³ Under Section 15.239 of the Commission’s Rules, 47 C.F.R. § 15.239, non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmissions does not exceed 250 µV/m at three meters. The agents’ measurements indicated that the station’s field strength extrapolated to three meters was 22,549,576 µV/m. Thus, the station operating on 105.1 MHz exceeded the permissible level for a non-licensed low-power radio transmitter by 90,198 times.

church who identified Richard Muñoz as the operator of the radio station transmitting on 105.1 MHz. The witnesses also provided the agents a business card identifying Richard Muñoz as the pastor of a Spanish-language ministry called Mission Possible Ministries and a brochure advertising a radio program called "Mision Posible 105.1 MHz." Immediately thereafter, the agents inspected the station inside the church and found studio and transmitting equipment in operation. The agents interviewed Mr. Muñoz, who admitted that his ministry owned the radio station equipment and operated the station. The agents asked Mr. Muñoz if he had a license for the station and he replied that a friend had submitted an application to the FCC and had advised him that he could operate the station while the paperwork was being processed. The agents advised Mr. Muñoz that he could not operate the station without a license and directed him to terminate the unlicensed operation. Mr. Muñoz requested additional time to notify his listeners that the station had to go off the air. After the agents again advised Mr. Muñoz that he could not operate the station without a license and directed him to take the station off the air, Mr. Muñoz directed another person to turn off the transmitter. The agents then hand delivered to Mr. Muñoz a warning letter which advised him that operation of a radio station without a license violates Section 301 of the Act, ordered him to cease operation of the unlicensed station immediately, and listed the penalties for unauthorized operation of a radio station.

4. On April 30, 2002, the Tampa Office received a complaint alleging that an unlicensed FM station operating on 105.1 MHz in Naples, Florida was causing interference to the reception of an FM broadcast station licensed to operate in Naples, Florida. On May 14, 2002, using a mobile direction finding vehicle, agents from the Tampa Office again detected an FM radio station operating on 105.1 MHz and traced the station to the Tree of Life Church located at 2132 Shadowlawn Drive, Naples, Florida. The agents took field strength measurements of the station's signal and determined that the station required a license to operate.⁴ On May 17, 2002, the Tampa Office issued a warning letter to Andrew DeLong, the head pastor of the Tree of Life Church. The warning letter advised Mr. DeLong that operation of a radio station without a license violates Section 301 of the Act, ordered him to cease operation of the unlicensed station transmitting on 105.1 MHz immediately, and listed the penalties for unauthorized operation of a radio station. On May 24, 2002, the Tampa Office received a letter from Mr. DeLong. In the letter, Mr. DeLong stated that Richard Muñoz was the operator of the radio station transmitting on 105.1 MHz, that Mr. Muñoz leased space for the radio station from the Tree of Life Church, and that the Tree of Life Church had no control over the operations of the radio station. Mr. DeLong further stated that after the agents' inspection of the station on April 20, 2002, Mr. Muñoz told him that it was a simple misunderstanding or a misplacement of the paperwork and returned the station to the air a short time later. Finally, Mr. DeLong stated that after receiving the May 17, 2002, warning letter, he spoke with Mr. Muñoz and Mr. Muñoz shut down the radio station.

5. On June 5, 2002, the Tampa Office issued an *NAL* for a \$10,000 forfeiture to Richard Muñoz for operating a radio station without a license in willful and repeated violation of Section 301 of the Act. In his response to the *NAL*, Mr. Muñoz admits that he operated the unlicensed station on 105.1 MHz, but requests cancellation of the forfeiture. Mr. Muñoz states that his church, Mission Possible Ministries, had agreed to purchase 50% of the radio station for \$15,000 from Daniel Morisma approximately eight months earlier. Mr. Muñoz maintains that Mr. Morisma told him that there was an application for the radio station on file at the FCC and that the station could go on the air while they were waiting for the application to be processed. Mr. Muñoz states that when the FCC agents came to the station on April 20, 2002, and

⁴ The agents' measurements indicated that the station's field strength extrapolated to three meters was 20,646,659 $\mu\text{V/m}$. Thus, the station operating on 105.1 MHz exceeded the permissible level for a non-licensed low-power radio transmitter by 82,587 times.

directed him to shut down the unlicensed operation, he initially shut the station down but returned the station to the air a short time later after speaking with Mr. Morisma. According to Mr. Muñoz, Mr. Morisma told him that Mr. Morisma would get him the paperwork, that the station should go back on the air because the FCC would not visit again, and that if the FCC did visit again, it would issue a second warning before proceeding with any penalties. Mr. Muñoz asserts that the station had been using the time between the FCC's first and second visit to explain to listeners that they would soon be off the air because they had been lied to and scammed and that the station was a week away from dismantling when the FCC visited the station the second time. Finally, Mr. Muñoz submits that neither he nor his church has the funds to pay the \$10,000 forfeiture.

III. DISCUSSION

6. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Commission's Rules ("Rules"),⁶ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Policy Statement*"). In examining Mr. Muñoz's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷

7. Section 301 of the Act prohibits radio operation "except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act."⁸ Mr. Muñoz does not dispute that he operated a radio station without a license on April 20, 2002, and again on May 14, 2002. Accordingly, we conclude that Mr. Muñoz willfully and repeatedly violated Section 301 of the Act.

8. Regarding Mr. Muñoz's explanation for the violation, we think that it is unfortunate that Mr. Muñoz may have been duped into believing that there was an application for the radio station on file with the FCC and that he could put the station on the air while the application was being processed. However, Mr. Muñoz clearly knew following the inspection of the station by FCC agents on April 20 that the station was unlicensed. The agents orally warned Mr. Muñoz twice that the station was unlicensed and had to be shut down. The agents also gave Mr. Muñoz a written warning which advised him that operation of a radio station without a license violates Section 301 of the Act, ordered him to cease operation of the unlicensed station immediately, and listed the penalties for failure to do so. Mr. Muñoz simply chose to ignore these warnings. That Mr. Muñoz may have believed that the FCC would issue a second warning before issuing a forfeiture or other penalty does not justify his continued violation of Section 301 or provide a basis for reduction of the forfeiture amount. Moreover, while Mr. Muñoz claims that the station was using the time between the FCC's first and second visit to notify listeners that the station had to go off the air, this does not justify the continued violation of Section 301. Under these circumstances, we conclude that no reduction of the forfeiture on this basis is warranted.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 U.S.C. § 301.

9. Mr. Muñoz also maintains that neither he nor his church has the funds to pay a \$10,000 forfeiture. However, as stated in the *NAL*, the Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Mr. Muñoz provided no financial documentation in support of his request for cancellation of the forfeiture and therefore we have no basis upon which to analyze his inability to pay claim.

10. We have examined Mr. Muñoz's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Mr. Muñoz willfully and repeatedly violated Section 301 of the Act and that he has provided no basis for rescission or reduction of the \$10,000 forfeiture.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503 of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,⁹ Richard Muñoz **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 301 of the Act.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁰ Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232700011 and FRN 0007-0496-61. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹¹

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to Richard Muñoz, 2132 Shadowlawn Drive, Naples, Florida 34112.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁰ 47 U.S.C. § 504(a).

¹¹ See 47 C.F.R. § 1.1914.